

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION

UNITED STATES OF AMERICA and the  
STATE OF WISCONSIN

Plaintiffs,

v.

NCR CORPORATION, *et al.*,

Defendants.

Civil Action No. 10-C-910

The Honorable William C. Griesbach

**CONSENT DECREE  
WITH NEWPAGE WISCONSIN SYSTEM, INC.**

**CONSENT DECREE  
WITH NEWPAGE WISCONSIN SYSTEM, INC.**

A. The United States and the State of Wisconsin filed a complaint in this matter pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9606 and 9607 (“CERCLA”), seeking various forms of relief regarding the Lower Fox River and Green Bay Superfund Site (the “Fox River Site” or the “Site”),<sup>1</sup> including the recovery of certain response costs<sup>2</sup> incurred in connection with releases and threatened releases of hazardous substances at and from the Site. The responsible natural resource trustees also contend that they have claims for recovery of natural resource damages (including for recovery of natural resource damage assessment costs)<sup>3</sup> and the Plaintiffs’ complaint seeks recovery of such damages. This Consent Decree sets forth the terms of a civil settlement among the Plaintiffs, the responsible natural resource trustees, and NewPage Wisconsin System, Inc. (“NewPage Wisconsin”) and certain of its current and former affiliates.<sup>4</sup>

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<sup>1</sup> As used herein, the terms “Fox River Site” and “Site” shall mean the Lower Fox River and Green Bay Superfund Site, which encompasses: (i) approximately 39 miles of the Lower Fox River from the outlet of Lake Winnebago downstream to the mouth of the Fox River at the City of Green Bay; and (ii) the bay of Green Bay from the mouth of the Fox River at the City of Green Bay to the point where the bay enters Lake Michigan. A map of the Site is attached as Appendix A to this Consent Decree.

<sup>2</sup> As used herein, the term “response costs” shall mean all costs of “response” as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

<sup>3</sup> As used herein, the term “natural resource damages” means any damages recoverable by the United States or the State on behalf of the public, or by the Tribes, for injury to, destruction of, or loss or impairment of Natural Resources at the Site as a result of a release of hazardous substances, including but not limited to: (i) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to such release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost natural resources or of acquisition of equivalent resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, impairment, diminution in value, or loss of use of natural resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15 and applicable state and tribal law.

<sup>4</sup> The relevant current and former affiliates are: Chillicothe Paper Inc.; Escanaba Paper Company; Luke Paper Company; NewPage Canadian Sales LLC; NewPage Consolidated Papers Inc.; NewPage Corporation; NewPage Energy Services LLC; NewPage Group Inc.; NewPage Holding Corporation; NewPage Port Hawkesbury Holding LLC; Rumford Paper Company; Upland Resources, Inc.; and

NewPage Wisconsin System and the current affiliates are collectively referred to herein as the “Reorganized Debtors.”

B. On September 7, 2011 (the “Petition Date”), each of the Debtors filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), which were consolidated for procedural purposes and jointly administered as *In re NewPage Corporation, et al.*, Case No. 11-12804 (the “Bankruptcy Cases”).

C. On January 25, 2012, this Court entered a Decision and Order confirming the ability of the United States and the State to continue the pursuit of their CERCLA claims against NewPage Wisconsin in this case pursuant to the “police and regulatory” exception to the bankruptcy automatic stay, 11 U.S.C. § 362(b)(4) [E.D. Wis. Docket No. 297].

D. The United States, on behalf of the United States Environmental Protection Agency (the “EPA”) and the United States Department of the Interior (the “DOI”), has filed a proof of claim in the Bankruptcy Cases (Claim No. 2659) (the “U.S. Proof of Claim”), contending that NewPage Wisconsin is liable under CERCLA for costs incurred and to be incurred by the United States in response to releases and threats of releases of hazardous substances at or in connection with the Site, as well as natural resource damages and costs of assessment at or in connection with the Site.

E. [The State of Wisconsin (the “State”), on behalf of the Wisconsin Department of Natural Resources (“WDNR”), has filed a proof of claim in the Bankruptcy Cases (Claim No. 2656) (the “WDNR Proof of Claim”), contending that NewPage Wisconsin is liable under

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Wickliffe Paper Company LLC (collectively, together with NewPage Wisconsin, “NewPage”). For the avoidance of doubt, any reference to “NewPage” shall include the foregoing entities individually and collectively. Further, when referring to acts or events during the period when these entities were debtors and debtors in possession, the entities will be referred to as the “Debtors.”

CERCLA for costs incurred and to be incurred by the State in response to releases and threats of releases of hazardous substances at or in connection with the Site, as well as natural resource damages and costs of assessment at or in connection with the Site.]

F. The U.S. Proof of Claim [and the WDNR Proof of Claim] assert the aforementioned response cost liability and natural resource damage liability as unsecured non-priority claims, except to the extent: (i) any rights of setoff secure the claims; and (ii) any secured/trust interest exists in insurance, indemnity, or escrow proceeds.

G. But for this proposed settlement, NewPage Wisconsin would dispute, in whole or in part, the U.S. Proof of Claim, the WDNR Proof of Claim, and the allegations against NewPage Wisconsin in the Plaintiffs' complaint in this case.

H. NewPage Wisconsin, the United States, and the State wish to resolve their differences with respect to the U.S. Proof of Claim, the WDNR Proof of Claim, and the allegations against NewPage Wisconsin in this case, as provided herein.

I. The Plaintiffs have determined the following:

- i. Prompt settlement with NewPage Wisconsin is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);
- ii. The distribution under the Reorganization Plan (as defined below) by NewPage Wisconsin under this Consent Decree involves only a minor portion of the response costs and damages at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1), based upon the Plaintiffs' estimate that the total Site costs and damages may approach \$1.5 billion, including response costs incurred by the EPA Hazardous Substance Superfund and by other persons at or in connection with the Site; response costs anticipated to be incurred; a premium relating to response costs anticipated to be incurred; and natural resource damages;
- iii. The amount of hazardous substances contributed to the Site by NewPage Wisconsin and the toxic or other hazardous effects of the hazardous substances contributed to the Site by NewPage Wisconsin is minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). This is

based on Plaintiffs' judgment that: (i) NewPage Wisconsin contributed no more than 100 kg of PCBs to the Site and (ii) the hazardous substances contributed by NewPage Wisconsin to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site. Based on the volume and toxicity of the materials contributed by NewPage Wisconsin, as well as relevant equitable considerations, the Plaintiffs have determined that NewPage Wisconsin should bear no more than a 0.076% equitable share of the Site costs and damages.

J. Consistent with CERCLA Section 122(j)(1), 42 U.S.C. § 9622(j)(1), EPA also has notified the members of the Fox River / Green Bay Natural Resource Trustee Council (the "Trustees") of negotiations with NewPage Wisconsin regarding this settlement as it relates to injuries to natural resources under Federal, State, and Tribal trusteeship at the Site. The Trustees have participated in the negotiation of this Consent Decree and support this Consent Decree. The Oneida Tribe of Indians of Wisconsin and the Menominee Indian Tribe of Wisconsin (the "Tribes") are additional signatories to this Consent Decree.

K. The Bankruptcy Court confirmed the *Debtors' Modified Fourth Amended Joint Chapter 11 Plan* in the Bankruptcy Cases (the "Reorganization Plan") [Bankruptcy Case Docket No. 2904] in an Order (the "Confirmation Order") entered on December 14, 2012 [Bankruptcy Case Docket No. 2945], and the Reorganization Plan became effective on December 21, 2012. This Consent Decree provides for a distribution under the Reorganization Plan as a Class 3A Claim from an agreed reserve (the "Fox River Reserve") established pursuant to the *Order Approving Stipulation By and Among the Debtors and the United States of America Establishing Agreed Reserve for Plan Distribution* [Docket No. 2933]. The Fox River Reserve is currently being administered by the litigation trust (the "Litigation Trust") created under the Reorganization Plan.

L. The Parties<sup>5</sup> recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will expedite the cleanup and restoration of the Site and will avoid or minimize prolonged and complicated litigation, and that this Consent Decree is procedurally and substantively fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, and DECREED:

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 9613(b), and also has personal jurisdiction over NewPage Wisconsin. NewPage Wisconsin consents to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree; provided, however, that such enforcement shall be solely limited to pursuit of the Fox River Reserve.

2. By entering into this Consent Decree, the mutual objectives of the Parties are to reach a final settlement with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows NewPage Wisconsin to resolve its alleged civil liability under Section 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for response costs and natural resource damages incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site, and to provide for full and complete contribution protection for NewPage with regard to the Site pursuant to Section 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

3. In full and final satisfaction of all claims against NewPage related to the Fox River Site, the United States on behalf of EPA shall have an Allowed Claim (as that term is used

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<sup>5</sup> As used herein, the term "Parties" shall mean the United States, the State of Wisconsin, the Tribes, and NewPage Wisconsin.

in the Plan) of \$475,300.50 for the Fox River Site (the “EPA Allowed Claim”), to be paid from the Fox River Reserve as an Allowed GD Class 3A General Unsecured Claim against NewPage Wisconsin under Plan Article III.

4. In full and final satisfaction of all claims against NewPage related to the Fox River Site, the State on behalf of WDNR shall have an Allowed Claim (as that term is used in the Plan) of \$475,300.50 for the Fox River Site (the “WDNR Allowed Claim”), to be paid from the Fox River Reserve as an Allowed GD Class 3A General Unsecured Claim against NewPage Wisconsin under Plan Article III.

5. In full and final satisfaction of all claims against NewPage related to the Fox River Site, the United States on behalf of DOI shall have an Allowed Claim (as that term is used in the Plan) of \$206,653.00 for the Fox River Site (the “DOI Allowed Claim”), to be paid from the Fox River Reserve as an Allowed GD Class 3A General Unsecured Claim against NewPage Wisconsin under Plan Article III.

6. The EPA Allowed Claim, the WDNR Allowed Claim, and the DOI Allowed Claim shall receive the same treatment under the Plan, without discrimination, as all other Allowed GD Class 3A General Unsecured Claims against NewPage Wisconsin under Plan Article VII, with all attendant rights provided by the Bankruptcy Code and other applicable law, and shall not be entitled to any priority in distribution over other Allowed GD Class 3A General Unsecured Claims against NewPage Wisconsin; provided, however, that the EPA Allowed Claim, the WDNR Allowed Claim, and the DOI Allowed Claim shall be paid out of the Fox River Reserve. In no event shall the EPA Allowed Claim, the WDNR Allowed claim, or the DOI Allowed Claim be subordinated to any other Allowed GD Class 3A General Unsecured Claims against NewPage Wisconsin pursuant to any provision of the Bankruptcy Code or other

applicable law that authorizes or provides for subordination of allowed claims, including, without limitation, Sections 105, 510, and 726(a)(4) of the Bankruptcy Code.

7. To the extent that, at any time after this Consent Decree is lodged with this Court, NewPage Wisconsin recovers insurance proceeds on account of the Fox River Site in excess of NewPage Wisconsin's costs of pursuing such insurance proceeds, NewPage Wisconsin may retain 50% of such excess insurance proceeds, and NewPage Wisconsin shall pay 50% of such excess insurance proceeds to the United States and the State. For any such excess insurance proceeds paid to the United States and the State, 41% of the proceeds shall be treated as an additional payment on the EPA Allowed Claim, 41% of the proceeds shall be treated as an additional payment on the WDNR Allowed Claim, and 18% shall be treated as an additional payment on the DOI Allowed Claim. NewPage Wisconsin shall instruct its insurer(s) to transmit such excess insurance proceeds, on NewPage Wisconsin's behalf, directly to the United States and the State in accordance with Paragraphs 14 and 15, but any failure or refusal by the insurer(s) to comply with NewPage Wisconsin's instruction shall in no way relieve NewPage Wisconsin of the payment obligation set forth in the first sentence of this Paragraph 7. NewPage Wisconsin agrees to allocate in writing any excess insurance proceeds on a fair and equitable basis among sites, based upon all of the facts and circumstances, including, but not limited to, any defenses asserted by insurers, and with deference to any allocation by a court or in an approved settlement document. In allocating NewPage Wisconsin's cost of pursuing insurance proceeds among sites, NewPage Wisconsin shall use the same percentage allocation of costs as is used in NewPage Wisconsin's allocation of recovery of excess insurance proceeds. To the extent that excess insurance proceeds are allocable to sites or claims other than the Fox River Site, no payment need be made to the United States or the State from the excess insurance proceeds allocable to other sites or claims. The United States and the State reserve the right to



petition the Bankruptcy Court for an adjustment of NewPage Wisconsin's allocation based upon all of the facts and circumstances. The payments required to be made under this Paragraph 7 shall be in addition to the distributions required to be made under Paragraphs 3, 4, and 5. However, under no circumstances may the payments required to be made under this Paragraph 7 (when combined with the distributions received under Paragraphs 3, 4, and 5), exceed the amount of the Allowed Claims under Paragraphs 3, 4, and 5. In the event that the excess insurance proceeds sharing requirements of this Paragraph 7 would otherwise result in such an exceedance, NewPage Wisconsin may receive and retain the additional amount of excess insurance proceeds necessary to avoid such an exceedance.

8. EPA shall deposit any cash distributions it receives pursuant to this Consent Decree, and any portion of the proceeds of any non-cash distributions it receives pursuant to this Consent Decree, into an EPA special account established for the Fox River Site within the Hazardous Substance Superfund established pursuant 25 U.S.C. § 9507, to be retained and used to conduct or finance response actions at or in connection with the Fox River Site, or to be transferred to the Hazardous Substance Superfund.

9. WDNR shall deposit any cash distributions it receives pursuant to this Consent Decree, and any portion of the proceeds of any non-cash distributions it receives pursuant to this Consent Decree, into a Site-specific account established by WDNR, to be retained and used to conduct or finance response actions at or in connection with the Fox River Site. If any funds remain in that Site-specific WDNR account after completion of the response action at the Site, WDNR shall transfer all remaining funds to the EPA Hazardous Substance Superfund.

10. DOI shall deposit any cash distributions it receives pursuant to this Consent Decree, and any portion of the proceeds of any non-cash distributions it receives pursuant to this Consent Decree, into a Site-specific subaccount within the DOI Natural Resource Damage

Assessment and Restoration Fund established for the Fox River Site, to be managed by DOI for the joint benefit and use of the members of the Fox River/Green Bay Natural Resource Trustee Council to pay for natural resource restoration projects jointly selected by the Trustee Council and/or to be applied toward natural resource damage assessment costs incurred by DOI.

11. Only the amount of cash received by EPA (and net cash received upon sale of any non-cash distributions) pursuant to this Consent Decree for the EPA Allowed Claim, and not the total amount of the EPA Allowed Claim, shall be credited by EPA to its account for the Fox River Site, which credit shall reduce the response cost liability of non-settling potentially responsible parties for the Site by the amount of the credit.

12. Only the amount of cash received by WDNR (and net cash received upon sale of any non-cash distributions) pursuant to this Consent Decree for the WDNR Allowed Claim, and not the total amount of the WDNR Allowed Claim, shall be credited by WDNR to its account for the Fox River Site, which credit shall reduce the response cost liability of non-settling potentially responsible parties for the Site by the amount of the credit.

13. Only the amount of cash received by DOI (and net cash received upon sale of any non-cash distributions) pursuant to this Consent Decree for the DOI Allowed Claim, and not the total amount of the DOI Allowed Claim, shall be credited by DOI to its account for the Fox River Site, which credit shall reduce the natural resource damage liability of non-settling potentially responsible parties for the Site by the amount of the credit.

14. Cash distributions to the United States pursuant to this Consent Decree shall be made at <https://www.pay.gov> or by FedWire Electronic Funds Transfer in accordance with instructions, including a Consolidated Debt Collection System (“CDCS”) number, to be provided to NewPage Wisconsin and the Litigation Trust by the Financial Litigation Unit of the United States Attorney’s Office for the Eastern District of Wisconsin.

15. Cash distributions to the State pursuant to this Consent Decree shall be made in accordance with payment instructions to be provided to NewPage Wisconsin and the Litigation Trust by the Wisconsin Department of Justice.

16. At the time of any distribution pursuant to this Consent Decree, NewPage Wisconsin or the Litigation Trust shall transmit written confirmation of such distribution to the United States and the State at the addresses specified below, with a reference to E.D. Wis. Case No. 10-cv-910, the CDCS number, and Site/Spill ID Number A5 65:

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044  
Ref. DOJ File No. 90-5-2-1-06444/1

Richard Murawski  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

John Carlucci  
Division of Parks and Wildlife  
Office of the Solicitor  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, DC 20240

As to the State:

Cynthia R. Hirsch  
Assistant Attorney General  
Wisconsin Department of Justice  
P.O. Box 7857  
Madison, WI 53707-7857

Kenneth Johnson  
Administrator, Division of Water  
Wisconsin Department of Natural Resources  
P.O. Box 7921  
Madison, WI 53707-7921

17. Notwithstanding any other provision of this Consent Decree, and except as provided under applicable non-bankruptcy law, there shall be no restrictions on the ability and right of EPA, WDNR, or DOI to transfer or sell all or a portion of any securities distributed to it pursuant to the Reorganization Plan, to sell its right to all or a portion of any distributions under the Reorganization Plan to one or more third parties.

18. In consideration of the distributions that will be made under the terms of this Consent Decree, and except as specifically provided in Paragraphs 21-23, the United States, on behalf of EPA and DOI, covenants not to file, sue, or pursue any civil or criminal action whatsoever or take any administrative action against NewPage pursuant to Sections 106, 107, or 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, 9613, or Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f), or Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), or Federal statutory and common law, relating to the Fox River Site. This covenant is conditioned upon the satisfactory performance by NewPage Wisconsin (by and through the Litigation Trust) of its obligations under this Consent Decree.

19. In consideration of the distributions that will be made under the terms of this Consent Decree, and except as specifically provided in Paragraphs 21-23, the State, on behalf of WDNR, covenants not to file, sue, or pursue any civil or criminal action whatsoever or take any

administrative action against NewPage pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f), or Wisconsin statutory or common law, relating to the Fox River Site. This covenant is conditioned upon the satisfactory performance by NewPage Wisconsin (by and through the Litigation Trust) of its obligations under this Consent Decree.

20. In consideration of the distributions that will be made under the terms of this Consent Decree, and except as specifically provided in Paragraphs 21-23, the Tribes covenant not to file, sue, or pursue any civil or criminal action whatsoever against NewPage for natural resource damages pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, Wisconsin statutory or common law, or tribal law, relating to the Site. This covenant is conditioned upon the satisfactory performance by NewPage Wisconsin (by and through the Litigation Trust) of its obligations under this Consent Decree.

21. The covenants set forth in Paragraphs 18, 19, and 20 extend only to NewPage and its directors, officers, employees, agents, contractors, successors, and assigns and do not extend to any other person. Nothing in this Consent Decree is intended as a covenant for any person or entity other than NewPage, the United States, the State, and the Tribes. The United States, the State, the Tribes, and NewPage expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which they may have against all other persons, firms, corporations, or entities for any matter arising at or relating in any manner to the Fox River Site. Further, nothing in this Consent Decree diminishes the rights of the United States and the State, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to enter into any settlement that gives rise to contribution protection for any person not a party to this Consent Decree.

22. The covenants set forth in Paragraphs 18, 19, and 20 do not pertain to any matters other than those expressly specified therein. Subject to the Reorganization Plan and the Confirmation Order, the United States, the State, and the Tribes expressly reserve, and this Consent Decree is without prejudice to, all rights against NewPage with respect to all matters unrelated to the Site. The United States, the State, and the Tribes also specifically reserve, and this Consent Decree is without prejudice to, any action based on a failure to meet a requirement of this Consent Decree. In addition, the United States, the State, and the Tribes reserve, and this Consent Decree is without prejudice to, all rights against NewPage Wisconsin with respect to the Fox River Site for liability under federal, state, or tribal law for future disposal of Waste Material at the Site by NewPage Wisconsin that occurs after the date of lodging of this Consent Decree.

23. Nothing in this Consent Decree shall be deemed to limit the authority of the United States or the State to take any response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable statute or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States or the State pursuant to such authority, provided, however, that nothing in this sentence affects the covenants set forth in Paragraphs 18, 19, and 20. Nothing in this Consent Decree shall be deemed to limit the information-gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable statute or regulation, or to excuse NewPage Wisconsin from any disclosure or notification requirements imposed by CERCLA or any other applicable statute or regulation.

24. The Reorganized Debtors covenant not to sue and agree not to assert or pursue any claims or causes of action against the United States, the State, or the Tribes, including any department, agency, or instrumentality of the United States, the State, or the Tribes, with respect to the Fox River Site, including, but not limited to: (i) any direct or indirect claim for

reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, or Section 7002(a) of RCRA, 42 U.S.C. § 6972(a); or (iii) any claims arising out of response activities or natural resource injuries at the Fox River Site. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

25. Notwithstanding any other provision of this Consent Decree, the Reorganized Debtors reserve, and this Consent Decree is without prejudice to, claims against the United States in the event any claim is asserted by the United States against the Reorganized Debtors pursuant to any of the reservations set forth in Paragraph 22, other than for failure to meet a requirement of this Consent Decree.

26. Notwithstanding any other provision of this Consent Decree, the Reorganized Debtors reserve, and this Consent Decree is without prejudice to, claims against the State in the event any claim is asserted by the State against the Reorganized Debtors pursuant to any of the reservations set forth in Paragraph 22, other than for failure to meet a requirement of this Consent Decree.

27. Notwithstanding any other provision of this Consent Decree, the Reorganized Debtors reserve, and this Consent Decree is without prejudice to, claims against the Tribes in the event any claim is asserted by the Tribes against the Reorganized Debtors pursuant to any of the reservations set forth in Paragraph 22, other than for failure to meet a requirement of this Consent Decree.

28. The Parties hereto agree, and by entering this Consent Decree the Court finds, that this Consent Decree constitutes a judicially-approved settlement and release for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that NewPage is entitled to

protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), or as may be otherwise provided by law, for “matters addressed” in this Consent Decree. The Parties also agree, and by entering this Consent Decree this Court finds, that NewPage is entitled, as of the Effective Date (as defined in paragraph 37 herein), to protection, as provided by any applicable law, including federal common law, from actions or claims under CERCLA Section 107(a)(4)(B), 42 U.S.C. § 9607(a)(4)(B), by any liable person, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken, and all response costs incurred or to be incurred, at or in connection with the Fox River Site by the United States, the State, the Tribes, or any potentially responsible parties, as well as damages for injuries to natural resources at the Fox River Site; provided, however, that, if the United States, the State, or the Tribes exercise rights under the reservations in Paragraph 22, other than for failure to meet a requirement of this Consent Decree, the “matters addressed” in this Consent Decree shall no longer include those response costs, response actions, or damages that are within the scope of the exercised reservation.

29. NewPage Wisconsin’s entry into this Consent Decree shall be conditioned on obtaining the approval of the Bankruptcy Court. NewPage Wisconsin shall promptly seek such approval under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code.

30. NewPage Wisconsin shall not amend the Plan of Reorganization in a manner inconsistent with the terms and provisions of this Consent Decree, or take any other action in the Bankruptcy Cases that is inconsistent with the terms and provisions of this Consent Decree. NewPage Wisconsin shall timely serve the other Parties to this Consent Decree with any motion to amend the Plan after the date of lodging of this Consent Decree. The United States, the State, and the Tribes shall not oppose any term or provision of the Plan that is addressed by and



consistent with this Consent Decree. The Parties reserve all other rights and defenses they may have with respect to the Plan.

31. This Consent Decree shall be lodged with this Court and shall thereafter be subject to a period of public comment following publication of notice in the *Federal Register*. After the conclusion of the public comment period, the United States will file with this Court any comments received, as well as the United States' responses to the comments, and at that time, if appropriate, the United States will request approval of the Consent Decree. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is not in the public interest.

32. If for any reason (a) the Consent Decree is withdrawn by the United States as provided in Paragraph 31, (b) the Bankruptcy Court does not approve NewPage Wisconsin's entry into this Consent Decree, or (c) the Consent Decree is not approved by this Court: (i) this Consent Decree shall be null and void, and the Parties hereto shall not be bound under the Consent Decree or under any documents executed in connection herewith; (ii) the Parties shall have no liability to one another arising out of or in connection with this Consent Decree or under any documents executed in connection herewith; and (iii) this Consent Decree and any documents prepared in connection herewith shall have no residual or probative effect or value.

33. This Consent Decree constitutes the sole and complete agreement of the Parties hereto with respect to the matters addressed herein.

34. This Consent Decree may not be amended except by a writing signed by all the Parties and approved by this Court.

35. This Consent Decree may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

36. This Court shall retain jurisdiction over the subject matter of this Consent Decree and the Parties hereto for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Consent Decree or to effectuate or enforce compliance with its terms.

37. The Effective Date of this Consent Decree shall be the date upon which it is entered by the Court.

38. The undersigned representatives of NewPage Wisconsin, the United States, the State, and the Tribes each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

39. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, the Tribes, and NewPage Wisconsin. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED

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WILLIAM C. GRIESBACH, Chief Judge  
United States District Court - WIED

THE UNDERSIGNED PARTY agrees to the terms of this Consent Decree with NewPage Wisconsin System, Inc. in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Superfund Site:

FOR THE UNITED STATES OF AMERICA

Date: \_\_\_\_\_

\_\_\_\_\_  
IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

Date: \_\_\_\_\_

\_\_\_\_\_  
RANDALL M. STONE, Senior Attorney  
JEFFREY A. SPECTOR, Senior Attorney  
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Assistant United States Attorney  
Office of the United States Attorney  
517 E. Wisconsin Avenue, Room 530  
Milwaukee, WI 53202

THE UNDERSIGNED PARTY agrees to the terms of this Consent Decree with NewPage Wisconsin System, Inc. in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Superfund Site:

Date: \_\_\_\_\_

\_\_\_\_\_  
RICHARD C. KARL  
Superfund Division Director  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, IL 60604

Date: \_\_\_\_\_

\_\_\_\_\_  
RICHARD MURAWSKI  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, IL 60604

THE UNDERSIGNED PARTY agrees to the terms of this Consent Decree with NewPage Wisconsin System, Inc. in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Superfund Site:

FOR THE STATE OF WISCONSIN

Date: \_\_\_\_\_

\_\_\_\_\_  
CATHY STEPP  
Secretary  
Wisconsin Department of Natural Resources  
101 South Webster Street  
Madison, WI 53703

Date: \_\_\_\_\_

\_\_\_\_\_  
CYNTHIA R. HIRSCH  
Assistant Attorney General  
Wisconsin Department of Justice  
123 W. Washington Avenue  
Madison, WI 53702

THE UNDERSIGNED PARTY agrees to the terms of this Consent Decree with NewPage Wisconsin System, Inc. in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Superfund Site:

FOR THE  
MENOMINEE INDIAN TRIBE OF WISCONSIN

Date: \_\_\_\_\_

\_\_\_\_\_  
Chairman, Menominee Indian Tribe of Wisconsin  
Menominee Tribal Offices  
P.O. Box 910  
Keshena, WI 54135

THE UNDERSIGNED PARTY agrees to the terms of this Consent Decree with NewPage Wisconsin System, Inc. in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Superfund Site:

FOR THE  
ONEIDA TRIBE OF INDIANS OF WISCONSIN

Date: \_\_\_\_\_

\_\_\_\_\_  
Chairman, Oneida Tribe of Indians of Wisconsin  
P.O. Box 365  
Oneida, WI 54155

THE UNDERSIGNED PARTY agrees to the terms of this Consent Decree with NewPage Wisconsin System, Inc. in the matter of *United States and the State of Wisconsin v. NCR Corporation, et al.*, relating to the Lower Fox River and Green Bay Superfund Site:

FOR NEWPAGE WISCONSIN SYSTEM, INC.  
and its affiliates

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



Appendix A: Map of the Site

